

PROCEDURES FOR LOANS AND LOAN GUARANTEES

PRE-AWARD EVALUATION

Section 1.0 General

This Appendix establishes procedures to ensure that pre-award practices within the Department of Commerce will include the requirements established under [OMB Circular A-129, "Policies For Federal Credit Programs And Non-Tax Receivables"](#) and will be consistent with Department management objectives.

Section 2.0 Applicant Screening

The following standards will apply to screening all loan, and loan guarantee applicants:

.01 Credit Reports

- a. Credit reports will be obtained on loan and loan guarantee applicants (including individuals and both non-profit and commercial organizations) before awards are made. Credit reports will also be obtained on all major principals of a partnership or privately-held corporation.

Credit reports shall generally be obtained through the Federal Supply Schedule negotiated by the General Services Administration (GSA). A listing of approved credit report contractors can be found at GSA's [Business Information Services](#) website.

- b. Organization units are not required to obtain credit reports on State or local governments or federally recognized Indian Tribal Governments.
- c. Organization units shall also obtain credit reports on all existing debtors prior to restructuring, refinancing, or rescheduling loans and loan guarantees, and prior to making changes in any terms and conditions of the original credit agreement (also see [Chapter 7, Section 4.0, "Changes to Loan Agreements"](#)).
- d. Information presented in applications shall be verified by comparison with private sector credit reports and by use of other verification procedures.
- e. In addition to using credit reports to identify an applicant's financial relationship with the private sector, organization units shall also ensure that credit reports are used to identify applicants in default on other Federal programs and to identify other financial relationships that applicants may have with other Federal agencies.

- f. In obtaining and using credit reports, organization units shall ensure that loan and debt information on individuals is managed and used in accordance with the Privacy Act. The Privacy Act applies only to credit information relating to individuals; the Act does not apply to credit/debt information relating to commercial organizations. Guidance on obtaining and using credit report information is provided in [Appendix B](#) of this Handbook.

.02 Internal Revenue Service (IRS) Account Files

- a. Taxpayer Identification Number (TIN)

Organizational units shall obtain TINs from all loan and loan guarantee applicants. This will include the Employer Identification Number (EIN) for commercial organizations, and the Social Security Number (SSN) for individuals seeking financial assistance. This information will be included on any approved application form(s) required by an organizational unit.

- b. IRS Account Files

Applicants for loan and loan guarantee programs shall also be screened against IRS delinquent taxpayer account files. Procedures for screening delinquent taxpayer accounts are provided in [Appendix D](#) of this Handbook.

.03 Credit Alert Interactive Voice Response System(CAIVRS) (See [Appendix B](#) of this Handbook)

According to the guideline established under [OMB Circular A-129](#), organization units should use Department of Housing And Urban Development's Credit Alert Interactive Voice Response System(CAIVRS) for loan screening to ensure applicants are not delinquent on Federal Debt. The System offers direct on-line access for delinquent debt from other major credit programs.

Section 3.0 Credit Analysis and Ability to Repay

.01 Creditworthiness

Organization units shall perform an analysis of each credit application and shall assess the applicant's creditworthiness, financial responsibility, and ability to repay. The assessment must address the "Five C's" of credit analysis--character, capacity, capital, conditions, and collateral. At a minimum, the analysis should include the following:

- a. For individuals: employment history, current income and indebtedness, repayment of prior debts, assets, potential future income, and indebtedness;

For commercial organizations: balance sheet, income statement, cash flow statement, market position, strength of competition (including foreign competition), marketing strategy, working capital assessment, asset ratios, analysis of market share, ownership, management expertise, appraisals of guarantees, and collateral;

- b. Review of audited financial statements and income tax returns; and
- c. Determination of whether collateral is insured or pledged on other debts.

.02 Risk Profile

Organization unit loan officers shall ensure that the actual credit risks and costs are compatible with program objectives by:

- a. Investigating credit histories;
- b. Determining risk ratings; and
- c. Comparing risk of individual and commercial applicants with program objectives established by enabling statute.

.03 Private Sector Financing

When a credit analysis concludes that an applicant is likely to qualify for private sector financing, the organization unit loan officer shall recommend that the applicant seek private lending sources unless authorizing statutes provide otherwise. In no instance will an official refer the name of an individual or commercial organization to a private sector financial institution.

Section 4.0 Applicant's Outstanding Debt(s) with Federal Agencies

Unless a waiver has been obtained in accordance with the [Debt Collection Improvement Act of 1996](#), a person may not obtain any Department of Commerce financial assistance in the form of a loan (other than a disaster loan) or loan insurance or guarantee administered by the Department if the person has an outstanding debt (other than debt under the Internal Revenue Code of 1986) with any Federal agency which is in a delinquent status, as determined under standards prescribed by the Secretary of the Treasury. Such a person may obtain additional loans or loan guarantees only after such delinquency is resolved in accordance with those standards.

Section 5.0 Loan Application, Origination, and Guarantee Fees

Consistent with statutory prohibitions and requirements of enabling legislation, loan application, origination, and guarantee fees shall be assessed on direct loans provided or loans guaranteed by the Department, to defray administrative costs, estimated losses and other costs, or to comply with regulatory or other requirements.

.01 Application Fees

Application fees shall be established to recover the costs of obtaining credit reports and the administrative costs of reviewing and processing applications. The fees will be collected at the time the application is submitted to the organization unit. Exceptions may be made for unsuccessful applicants on the basis of need.

.02 Origination Fees

Origination fees shall be assessed on direct loans to defray administrative and other costs. The fee shall be collected prior to award of a direct loan or subtracted from the initial disbursement.

.03 Guarantee Fees

Fees shall be required on guaranteed loans to cover organization unit administrative and servicing costs, as well as all or a portion of the estimated cost to the Government of defaults under the programs involved.

Section 6.0 Interest Rates

.01 Acceptable Interest Rates

- a. The method for determining an acceptable interest rate will vary depending on the type of assistance (direct loan or guaranteed loan).
 1. For direct loans, the organization unit will set the interest rate based on the provisions of the statute which governs the loan program or by reference to the market rate on a benchmark

Treasury security as required in [OMB Circular A-129](#). The benchmark financial market instrument should be a marketable Treasury security with a similar maturity to the direct loans being made. When the interest rate on loans is intended to be different than the benchmark rate, it should be stated as a percentage of that rate. Interest rates on direct loans should be reviewed at least annually.*

2. For guaranteed loans, the interest rate is negotiated between the borrower and the lender. The organization unit will not establish administrative ceilings on interest rates for guaranteed loans. Rather, the organization unit will review the interest rate on each guaranteed loan, comparing it to interest rates on other loans of similar character (i.e., size of loan, purpose, collateral, terms, and market conditions). If the interest rate for a guaranteed loan is found to be excessive, the application should be rejected.

.02 Types of Interest Rates

- a. Interest rates on direct loans may remain fixed over the life of the loan or may be adjustable, i.e., vary with financial market conditions. The rate will be referenced to a benchmark financial market instrument. Interest rates to be charged on new direct loans will be reviewed by organization units at least quarterly, and when market conditions have changed, adjusted by the organization unit to reflect corresponding changes in the market interest rate of the benchmark financial instrument chosen.
- b. Interest rates on guaranteed loans may also remain fixed, or may fluctuate with the movement of some reference market rate (i.e., the benchmark adopted by the lender) over the life of the loan.

The organization unit shall require the following information to appear on the notes for guaranteed variable rate loans:

*If the governing statute provides for an interest rate which is not in conformity with the interest rate and other policies of [OMB Circular A-129](#), Department organization units in their annual budget submission and justification to OMB and the Congress will propose legislative language to correct the inconsistency. When the organization unit deems no change to existing legislation is desirable, it will provide a separate justification for retaining the existing nonconforming legislative requirement in its annual budget submission and justification to OMB.

1. The rate being used as the benchmark;
2. The publication in which the benchmark appears (if applicable);
3. The lender's permanent point spread to be added to or subtracted from the benchmark;
4. The initial rate of the loan;
5. The date of the first rate adjustment;
6. The frequency of the rate adjustment; and
7. The method of determining the benchmark, if the benchmark is expressed as a range.

Section 7.0 Payment Schedule

Organization unit loan officers shall establish a payment schedule for each type of loan similar to that prevailing in the private sector for that type of debt. For rescheduled loans, debt repayment will be scheduled on a monthly basis, unless the head of an organization unit (or designee) determines extenuating circumstances exist.

Section 8.0 Debt Collection Certification

Organization units shall inform commercial organization and individual applicants for all financial assistance actions of Federal debt collection policies and procedures prior to extending credit or making an award. Loan, and loan guarantee, applicants shall be required to sign a certification statement (Exhibits A-1 or A-2, as appropriate and modified to reflect the financial assistance being provided) prior to award. The signed statement shall be maintained as part of the official file. Debt collection officials must not construe the statement as a notification under the [Debt Collection Improvement Act of 1996](#) or the [Deficit Reduction Act of 1984](#).

Section 9.0 Congressional Notification of Loans and Loan Guarantees

Congressional notification for loans and loan guarantees shall be the same as that prescribed for grants and cooperative agreements.

Section 10.0 Loan Guarantee Requirements

Organization units will incorporate [OMB Circular A-129](#) standards into agreements with private lenders on guaranteed loans. Responsible unit loan officials will monitor performance of the lenders of guaranteed loans to ensure “due diligence” in the application of [OMB Circular A-129](#) standards in extending and servicing the guaranteed loan.

Exhibit A-1
For Individual/Consumer Applicants

APPLICANT CERTIFICATION
FEDERAL COLLECTION POLICIES FOR CONSUMER DEBTS

The Department of Commerce is authorized by law to take any or all of the following actions in the event your loan payments become delinquent or you default on your loan:

- o Report your name and account information to a credit bureau.
- o Assess additional interest and penalty charges for the period of time payment is not made.
- o Assess charges to cover additional administrative costs incurred by the Government to service your account.
- o Offset amounts owed to you under other Federal programs.
- o Refer your account to Department of Treasury for collection action.
- o Refer your account to a private collection agency to collect the amount due.
- o Refer your account to the Department of Justice for litigation in the courts.
- o If you are a current or retired Federal employee, take action to offset your salary or civil service retirement benefits.
- o Refer your debt to the Internal Revenue Service for offset against any amount owed to you as an income tax refund.
- o Report any written-off debt to the Internal Revenue Service as taxable income.
- o Suspend processing of future applications for loans, loan guarantees, grants, or contracts until the amount due has been paid.

All these actions can and will be used to recover any debts owed when it is determined to be in the interest of the Government to do so.

Certification

I have read and I understand the actions the Federal Government can take in the event that I fail to meet my scheduled payments in accordance with the terms and conditions of my agreement.

Signed: _____

Date: _____

Address: _____

Telephone No.: () _____

Exhibit A-2
For Commercial Applicants

APPLICANT CERTIFICATION
FEDERAL COLLECTION POLICIES FOR COMMERCIAL DEBTS

The Department of Commerce is authorized by law to take any or all of the following actions in the event your loan payments become delinquent or you default on your loan:

- o Report your delinquent account to a credit bureau.
- o Assess additional interest and penalty charges for the period of time that payment is not made.
- o Assess charges to cover additional administrative costs incurred by the Government to service your account.
- o Offset amounts owed to you under other Federal programs.
- o Refer your account to Department of Treasury for collection action.
- o Refer your account to a private collection agency to collect the amount due.
- o Refer your account to the Department of Justice for litigation in the courts.
- o Suspend or debar you from doing business with the Federal Government.
- o Refer your debt to the Internal Revenue Service for offset against any amount owed to you as an income tax refund.
- o Report any written-off debt to the Internal Revenue Service as taxable income.

All these actions can and will be used to recover any debts owed when it is determined to be in the interest of the Government to do so.

Certification

I have read and I understand the actions the Federal Government can take in the event that I fail to meet my scheduled payments in accordance with the terms and conditions of my agreement.

Signed: _____

Date: _____

Position with
Commercial
Organization: _____

Telephone No.: () _____

CREDIT EXTENSION

Section 11.0 General

This Section provides the essential procedures for loan requests that have completed the pre-evaluation process through reservation of funds and approval by the organization unit's designated approving official, and covers the process of loan settlement, disbursement of obligated loan funds, and establishment of the official loan file.

Section 12.0 Loan Closing

Loan closing covers the period from final approval by the organization unit through acceptance of the offered loan by the potential borrower, obligation of funds, and issuance of the check (or electronic funds transfer) to the borrower for the obligated loan funds. The four critical phases in this process are described below:

.01 Contact with Borrower

The loan officer contacts the potential borrower to ensure:

- a. Receipt of the original executed loan offer together with its terms and conditions;
- b. Establishment of a date when the borrower will accept the offer if the date is not already established; and
- c. Resolution of questions and/or issues necessary to expedite the borrower's acceptance of the offer.

.02 Review of Loan Documents

The loan officer and legal counsel shall make a final review of the draft loan and/or final collateral documents and supporting papers to determine compliance with terms and requirements of the accepted offer. (Collateral documents associated with governments, units of government, quasi-public bodies and Indian tribes are not necessarily in final form at this stage, i.e., revenue bonds, warrants.)

The loan document must contain an explicit statement of a borrower's rights and responsibilities; this should be accomplished in a separate appendix to the loan agreement. This includes making explicit the conditions, if any, for borrowers to make prepayments.

.03 Obligation of Fund

The loan officer forwards the accepted offer to the accounting or finance office to record the obligation of funds. All documents are to be returned to the official loan file.

.04 Payment to Borrower

After all final documents are received and determined to be legally sufficient for the purposes of the loan agreement, the funds are electronically transferred or a check is presented by the loan officer to the borrower in accordance with the provisions of the [Debt Collection Improvement Act of 1996](#).

Section 13.0 Disbursement of Funds

.01 Requisition for Payment

Loan funds disbursed by Treasury will be in accordance with current Treasury guidelines and regulations. Payment will occur after the following steps have been completed:

- a. When the loan officer and counsel have determined that the accepted loan agreement and all collateral documents (certificates and other supporting papers from the borrower) are sufficient to authorize a disbursement, and all closing documents and recordings have been completed, the Treasury Department, on instruction from the organization unit's finance and accounting office will disburse payment(s) directly to the recipient(s).
- b. The accounting or finance office will authorize Treasury to disburse funds using the prescribed forms and procedures after receiving the requisition, and will establish the effective interest rate as of the loan closing date.

.02 Payment Terms and Conditions

The timing and requirements for disbursements will be set forth in the loan agreement terms and conditions, as well as specific prohibitions on reinvestment of the disbursement for non-loan related purposes.

Section 14.0 Official Loan File

.01 Establishment of File

The organization unit granting the loan will designate the responsible official who will establish the official loan file. Organization units will establish separate loan and collateral file systems so that the collateral documents will not be available to unauthorized individuals and will be properly safeguarded.

.02 Content of File

All files related to each loan are official and must contain the following information on the history and status of each loan:

- a. Applicant or debtor name, address, telephone number, and taxpayer identification number (either Employer Identification Number, or Social Security Number, if the applicant is an individual);
- b. Original application and supporting papers including financial reports, credit bureau report(s), property descriptions, and legal papers;
- c. Current copy of the loan offer and terms and conditions, including payment schedules;
- d. Statement of purpose for which credit was extended;
- e. All original internal review documents required for program, financial, and legal findings;
- f. Organization unit credit risk rating and financial and market analyses for commercial loans;
- g. Original copy of the finally accepted and obligated loan offer and the terms and conditions, including payment schedules;
- h. All letters, memoranda, legal opinions and requisitions for disbursement pertaining to negotiations and closure of the loan, including summary of telephone contacts between organization unit officials and the applicant; and
- i. All legal documents pertaining to the loan closure, including collateral documents (appraisal of collateral, including values of guarantees for secured loans), certificates, bond counsel opinions, charter resolution(s), minutes of proceedings, and title opinions.

.03 Maintenance of File

The loan file should be readily accessible to and maintained by the responsible loan officer. The file will be updated by that individual as required to provide information on the account status, payment history, and any rescheduling.

.04 Retirement of File

The file should be retired when the loan is paid in full and all conditions of the agreement satisfied, or when the loan has been officially terminated or liquidated. See [Chapter 10](#) for further information on close-outs. Organization units will follow Department approved record control schedules, as authorized in [DAO 205-1, "Records and Other Documents Disposition Management Program,"](#) relative to retiring, transferring, and disposing of records.